

Judicial Conference of Indiana Board of Directors

**January 15, 2010
Minutes**

The Judicial Conference of Indiana Board of Directors met at the Indiana Judicial Center on January 15, 2010. Chief Justice Randall Shepard presided and Jennifer Bauer acted as secretary.

1. **Members present.** The following members of the Board were present: John G. Baker, David R. Bolk, David L. Chidester, J. Terrence Cody, Darrin M. Dolehanty, Michael G. Gotsch, Frances C. Gull, Teresa D. Harper, Carl A. Heldt, William J. Hughes, Matthew C. Kincaid, Peggy L. Quint Lohorn, Daniel J. Molter, Carol J. Orbison, John A. Rader, Terry C. Shewmaker, Stephen M. Sims, Mark D. Stoner, Wayne S. Trockman, William E. Vance, Marianne L. Vorhees, Allen N. Wheat, Mary G. Willis and Randall T. Shepard, chair.
2. **Staff present.** The following Judicial Center staff members were present: Jane Seigel, Cathy Springer, Jeff Bercovitz, Anne Jordan, Jennifer Bauer, Mary Kay Hudson, Michelle Goodman, Lisa White, Diane Mains and Wendy Hendricks. Also present were Lilia Judson, David Remondini, and Kathryn Dolan of the Division of State Court Administration.
3. **Guests.** Judge Russell Sanders attended the meeting on behalf of the Special Courts Committee and Brian Lovins attended the meeting representing the University of Cincinnati.
4. **Approval of minutes.** The minutes from the meeting held on September 15, 2009 were unanimously approved.
5. **Indiana Judges Association Report.** Judge Terry Cody reported that the IJA executive committee met in December to discuss the Strategic Planning Committee's "white paper". They had a lengthy discussion on the paper and voted on each of the paper's proposals. Judge Cody reported the votes as follows: 1) education proposal—favored by a 28-2 vote; 2) unification/funding of courts—favored by a 17-13 vote; 3) clerk's function—favored 27-3; 4) merit selection of judges—opposed by a 10-20 vote. Judge Cody stated that IJA signed a new lobbying contract with Krieg DeVault. According to Judge Cody, IJA will not ask their lobbyists to do anything in the legislature on the issue of merit selection of judges. Judge Cody also stated that he and Judge Tom Felts met with the lobbyists recently. The lobbyists are monitoring attacks on JTAC and do not expect any significant legislation affecting the courts to come out of the session. Chief Justice Shepard asked Judge Cody to address the roll-out of the plain English jury instructions. Judge Cody informed the Board that the Civil Instructions Committee is

almost finished with its Plain English Project and IJA will sponsor a series of seminars around the state to educate attorneys on the new jury instructions.

- 6. Indiana Council of Juvenile and Family Court Judges.** Judge Sims reported that the ICJFCJ membership has been concerned about the provision of HB 1001 that gave the DCS director sole authority over out-of-state placements of juveniles. Judge Sims stated that Rep. Wynn Moses introduced HB 1167 that would give discretion back to judges to make out-of-state placements for juveniles. Judge Sims also reported that ICJFCJ board members are concerned about previous attempts in the legislature to remove the CHINS language regarding a child being a danger to himself or others. He said the judges are not in favor of this change being made to the CHINS statute. Judge Sims also said that the Juvenile Benchbook Committee recently amended language in court orders to insure federal reimbursement under Title IV-E. Anne Jordan, staff attorney to the Juvenile Benchbook Committee, distributed a copy of the changes proposed for certain court orders in CHINS and delinquency proceedings and explained that the changes relate to “best interests” language, “reasonable efforts” language, “placement and care” language, and “reasonable efforts toward permanency” language required by Title IV-E for reimbursement from the federal government. She also stated that the Benchbook Committee requests approval of these changes from the Board as required by IC 31-34-5-3 and IC 31-37-6-6. A motion was made to approve the proposed IV-E language for CHINS and delinquency court orders. The motion passed unanimously.
- 7. JTAC Liaison Report.** Judge Mary Willis reported that the newest counties to begin using the Odyssey Case Management System are Hamilton, Harrison, Owen, Blackford and Huntington. She stated that JTAC will target small counties with the oldest case management systems for the next wave of the Odyssey roll-out. According to Judge Willis, by the end of this roll-out counties will be using either Odyssey or CSI for case management. Judge Willis also reported that SB 60 proposes a study committee for the use of Odyssey. Judge Willis further reported that JTAC secured stimulus money for the ECWS electronic traffic ticket system and that there are now 9000 users for the Protection Order Registry.
- 8. Risk Assessment Project Update—Policy Considerations.** Jane Seigel informed the Board that the Judicial Center had been reporting on the progress of the Risk Assessment Task Force for over two years and that the project is now at a critical stage. She explained that the project updates Indiana’s current Board-approved risk assessment instrument and that current probation standards require that probation officers complete a risk assessment for all criminal offenders. Ms. Seigel reported that the new juvenile risk assessment instrument is completed and the adult instrument is close behind. Michelle Goodman explained the background of the project. She said that the Judicial Center has staffed the Task Force since it began work in May of 2006. The Task Force initially worked with consultants provided by a grant from the National Institute of Corrections. The Task Force membership consists of representatives from probation, the Indiana Department of Correction, community corrections, problem-solving courts, and Court A&D programs. With permission from the Board, the Judicial Center contracted with the University of Cincinnati to adopt Ohio’s new public domain risk assessments for use in

Indiana. Researchers from UC conducted a study to validate the adult and juvenile instruments on Indiana's population. The Task Force is currently working with UC to implement training on the instrument. The Judicial Center secured grant money from the Indiana Criminal Justice Institute for training and technology associated with the project. Ms. Goodman then introduced Brian Lovins, project manager from the University of Cincinnati. Mr. Lovins spoke about the youth assessment system, explaining that the Ohio project was born because a different risk assessment instrument was used in each of the state's 88 counties. The state of Ohio studied the effects of programming on juvenile offenders and found that the state system actually increased a child's risk to re-offend based on the programming used for low-risk offenders. Mr. Lovins said that UC found that the problem with most of the risk assessment instruments that had been used in Ohio counties was that they relied on historical information from files. He explained that UC did a prospective study and conducted face-to-face interviews with 2000 children. UC then tracked these children for one year post-interview and built the new risk assessment tools based on new crimes or arrest. Mr. Lovins emphasized that the tools are systems designed to predict group behavior and that risk to re-offend cannot be predicted to the individual. According to Mr. Lovins, the juvenile tool consists of the diversion tool, the detention tool, the disposition screener, the disposition tool and the residential tool. He said that the disposition tool is meant for medium to high risk offenders, targets dynamic change, and provides information for case planning. He said the Ohio system is a 4th generation tool built on the principles of risk, need and responsivity. Mr. Lovins concluded his remarks by reporting that 68 of Ohio's 88 counties are using the juvenile instrument and that Indiana personnel will be trained as trainers so that the instruments can be maintained independently. The Board discussed various aspects of the risk assessment systems and then Michelle Goodman distributed copies of the juvenile use policy recommendation and user certification policy recommendation from the Task Force. Ms. Goodman explained that the recommendations were approved by the Probation Officer Advisory Board and the Judges Probation Committee. A motion was made to approve the Task Force recommendations on juvenile assessment use and user certification. The motion was approved unanimously.

9. **Jury Committee Proposed Rule.** Judge Fran Gull reported that the Jury Committee is proposing a change to Jury Rule 4, 20 and 26. Judge Gull distributed copies of the proposed changes to these rules. The proposed change to Rule 4 would notify prospective jurors about bringing electronic communication devices to court. The committee recommends implementing the change to Rule 4 in January 2011. A motion was made to submit the proposed changes to Rule 4 to the Supreme Court for consideration in the normal rule-making cycle. Friendly amendments were offered to change the word "Blackberry" to "smart phone" and to remove the word "breaks" and add "discussions" in its place. The friendly amendments were accepted and the amended motion was approved unanimously. Another motion was made to submit the proposed changes to Rule 20 and Rule 26 to the Supreme Court for immediate review and implementation in July. The motion was approved unanimously. Judge Gull also reported that she met recently with Workforce Development officials on the issue of jury service disqualifying a person from receiving unemployment benefits. Judge Gull said that a statute would have to be changed to remedy the situation. A motion was made to

approve the Jury Committee's legislative proposal. The motion was approved unanimously.

- 10. Strategic Planning Committee.** Judge Mark Stoner reported that the Strategic Planning Committee met this morning. He said the committee discussed the districting/governance and funding proposal and will have a retreat in February to work out the details. Once the proposal is worked out, the committee will take it to the Commission on Courts. Judge Stoner also reported that the committee met with the Clerk's Association yesterday to discuss the "white paper".
- 11. Problem-Solving Courts Legislation.** Diane Mains reported that this is the second year that the Problem-Solving Courts is trying to get its legislation passed. She said that HB 1271 is sponsored by Rep. Eric Koch this year. The bill expands the creation of problem-solving courts and requires the Judicial Conference Board of Directors to establish rules for certification and operation of these courts. Ms. Mains also reported that Rep. Koch wants to amend the bill to require habitual traffic offenders go to problem-solving court and get probationary licenses. She distributed Rep. Koch's proposed language and said that Koch is looking for honest feedback from the Board. After discussion, the consensus of the Board was that they support the concept of the amendment, but think that it could jeopardize passage of HB1271 and suggest finding another vehicle for the amendment.
- 12. Special Courts Committee Rules Proposals.** Judge Russell Sanders, chair of the Special Courts Committee, reported that the committee recommends 4 changes to the Small Claims Rules. He explained that 3 of the proposed changes are to Rule 8: clarifies that a party must have an attorney on assigned claims; adds §(b) that requires waiver of damages over \$1500 if a corporation appears by an employee; keeps the amount of damages at \$1500 for corporations appearing by an employee. The proposed change to Rule 2 changes "itemized statement" to "statement of account". Judge Sanders explained that the committee created a form for Statement of Account with the help of practitioners and the Indiana State Bar Association. Judge Sanders also reported that the committee recommends amending Trial Rule 9.2 to require the filing of a Statement of Account when a claim is founded on an account. A motion was made to approve the proposals from the Special Courts Committee. The motion was approved unanimously.
- 13. State Court Administration Report.** Lilia Judson reported that judicial identification badges are at the printer and should be mailed soon. Ms. Judson also reported that Allen, Marion and St. Joseph Counties will participate in the mortgage foreclosure pilot project. She also stated that State Court Administration contracted with a part-time project manager to help with mortgage settlement conferences. Ms. Judson reported that State Court Administration produced a new video on Alternate Dispute Resolution and posted the video on the ADR page of the STAD website. Also on the subject of STAD's website, Ms. Judson reported that the "Self-Service Legal Center" webpage has been updated. Ms. Judson further reported that the Supreme Court has authorized electronic filing projects in Lake County and Marion County beginning in February. She informed the Board that STAD certified 98 senior judges last year. She said that many of the senior judges had trouble getting the minimum 30 days of service in, and a recent survey

showed that many courts use pro tem judges instead of senior judges. She asked the Board for help in encouraging courts to use senior judges. Jane Seigel stated that the list of senior judges and their available hours could be sent to trial courts to help in this regard.

14. Indiana Judicial Center Report. Jane Seigel introduced new staff member Wendy Hendricks and explained that she is not new to the Judicial Center because she worked at the Center from 1990 to 1997. Ms. Hendricks replaced the position left open by Yvonne Carter's retirement. Ms. Seigel distributed a schedule of Judicial Center meetings for January, February and March, highlighting that a Compact training will be conducted in February for over 100 probation officers. Ms. Seigel announced that Judicial Center staff attorney Jennifer Weber was absent from the meeting because she received a lung transplant on January 10th. She said Ms. Weber is doing well and will be at Methodist Hospital for several more weeks before going home to recuperate. Ms. Seigel also reported that she attended a legislative hearing this week on a bill that would allow Marion County commissioners to convert to magistrates. She said that funding for the magistrates would come from fines imposed on traffic infractions, with the county making up any shortfall. Ms. Seigel distributed a letter from Bartholomew Circuit Judge Stephen Heimann asking the Board to support a similar method of funding a new judge position for the county. The letter explains that the Commission on Courts validated the need for another judge in Bartholomew County, but subject to the availability of state funds. Ms. Seigel stated that Rep. Koch would like to know how the Board feels about creating new courts in this manner. Board members expressed reluctance to support this concept for the funding of new courts, but did not take an official position.

15. Other business. Chief Justice Shepard stated that sentencing statutes have been amended to require courts to include the costs of incarceration in the sentencing order. Several judges commented that they are unsure how to do this when they do not know the daily cost of incarceration in DOC facilities. Chief Justice Shepard also stated that state government is trying to find ways to cut costs. He said the Supreme Court has decided to postpone the regular cycle of district meetings in southern Indiana this year as a way to cut costs. He hopes that district meetings can continue in the future. Chief Justice Shepard also stated that he is worried about county budget cycles. He said that property tax assessments will make budgets even tighter in 2011 and is concerned that judges will be tempted to pursue mandate actions if court funding is cut.

16. Next meeting. The next meeting of the Judicial Conference Board of Directors will be April 16, 2010 at Noon at the Hilton North Hotel in Indianapolis.

Respectfully submitted,

Jennifer A. Bauer